

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

DANIELS SHARPSMART, INC.,
a Delaware Corporation,

Plaintiff,

V.

**CYNTOX LIMITED LIABILITY
COMPANY,
a New York Limited Liability Company,**

Defendant.

No. 2023-cv-3536

Presiding Hon. Sarah L. Ellis
Magistrate Hon. Young B. Kim

MOTION FOR PROTECTIVE ORDER TO STAY ORAL DISCOVERY

Plaintiff, Daniels Sharpsmart, Inc. (“Daniels” or “Plaintiff”), by and through its attorneys, Matthew C. Wasserman and Michelle Rakestraw, pursuant to Federal Rule of Civil Procedure 26(c), hereby moves this Honorable Court for a Protective Order permitting oral discovery to be stayed, and in support thereof, states as follows:

I. There Are Currently Two Substantially Similar Actions Pending in Two Federal District Courts

1. On June 5, 2023, the instant action was initiated by Daniels against Cyntox Limited Liability Company (“Cyntox”) based upon a breach of contract related to biomedical waste services.

2. On August 11, 2023, Cyntox, as Cyntox MedAssure, LLC, filed a second lawsuit in the District Court of New Jersey against Daniels as Case No. 3:23-cv-04365-RK-RLS, also based upon a breach of contract related to biomedical waste services (the “New Jersey matter”).

3. Daniels and Cyntox have an on-going business relationship that consists of a high volume of individual transactions made in performance of contracts that provide services that overlap substantially with one another.

4. As a result, there is substantial overlap between the instant matter and the New Jersey matter. Discovery will inevitably be duplicative involving the same documents and the same individuals being deposed regarding the same subject matter. No agreement between the two entities occurred in a vacuum and any discovery would require the evaluation of the full scope of the business relationship.

5. Due to the substantial overlap between the two matters, Daniels has requested the New Jersey District Court hold a required Pre-Motion conference prior to Daniels filing a motion to dismiss and transfer (the “Motion to Dismiss”) the New Jersey matter to this Court pursuant to the “first-filed” rule. *See* Letter Requesting Pre-Motion Conference, *Cyntox MedAssure, LLC v. Daniels Sharpsmart, Inc.*, 3:23-cv-04365, Dkt. 10 attached as **Exhibit A**.

II. Written Discovery Should Continue In This Matter But Oral Discovery Should Be Stayed Pending Ruling From The New Jersey Court

6. This Court may, for good cause, issue an order to protect a party from annoyance, embarrassment, oppression, or undue burden or expense, including specifying terms, including time and place for the discovery. Fed. R. Civ. Pro. 26(c)(1)(B).

7. The Parties have already begun exchanging written discovery in the instant matter. Cyntox has also issued two deposition notices for Dean McPhee and Richard Hall on November 6th and 7th, respectively.

8. On October 13, 2023, counsel for Daniels sent an email to counsel for Cyntox and requesting that the Parties agree to staying any depositions until a ruling was received on the

Motion to Dismiss the New Jersey matter due to the duplicative nature of the depositions. Counsel for Cyntox never responded. *See October 13, 2023 email* attached hereto as **Exhibit B**.

9. Pursuant to Local Rule 37.2 and Federal Rule of Civil Procedure 26(c)(1), Daniels attempted to confer with other affected parties in an effort to resolve the dispute without court action. Counsel for Daniels' attempts to engage in such consultation were unsuccessful due to no fault of counsel's.

10. Daniels respectfully requests that this Court enter a Protective Order staying any oral discovery in this matter until a ruling is entered on Daniels' Pre-Motion letter and anticipated Motion to Dismiss in the New Jersey Matter.

WHEREFORE, Plaintiff, Daniels Sharpsmart, Inc., respectfully requests that this Honorable Court, enter a Protective Order pursuant to Federal Rule of Civil Procedure 26(c)(1)(B):

- A. Staying all oral discovery until a ruling is entered on Daniels' Pre-Motion letter and Motion to Dismiss in the New Jersey Matter; and
- D. Granting such further relief as this Court deems just and appropriate.

Dated: October 31, 2023

Respectfully submitted,

DANIELS SHARPSMART, INC.,

By: /s/ Matthew C. Wasserman

One of Its Attorneys

Matthew C. Wasserman (#6287638)
Michelle Rakestraw (#6323764)
Dinsmore & Shohl LLP
222 W. Adams, Suite 3400
Chicago, IL 60606
(312) 837-4316
Matthew.wasserman@dinsmore.com
Michelle.rakestraw@dinsmore.com